

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

ROBIN HURLBURT,

Plaintiff,

v.

LOHR DISTRIBUTING CO., INC.,

Defendant.

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Case No. 4:17-cv-02733

**DEFENDANT’S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
DEFENDANT’S MOTION FOR SANCTIONS AGAINST PLAINTIFF ROBIN
HURLBURT AND/OR ATTORNEY DANIEL HARVATH FOR WILFULLY FAILING
TO APPEAR FOR PLAINTIFF’S DEPOSITION**

COMES NOW, Defendant, Lohr Distributing (hereinafter, “Defendant”), by and through undersigned counsel, pursuant to Rules 37(d) Federal Rules of Civil Procedure and moves this Court to Sanction Plaintiff Robin Hurlburt and/or attorney Daniel Harvath for willfully failing and refusing to appear at Plaintiff’s deposition. In support thereof, Defendant states as follows:

On December 13, 2018, Defendant filed with this Court Defendant’s Motion for Sanctions against Plaintiff Robin Hurlburt and/or Attorney Daniel Harvath for Willfully Failing to Appear for Plaintiff’s Deposition. Thereafter, Mr. Harvath contacted Defendant’s attorney Robert Younger stating the following:

Bobby:

In reviewing your most recent filing, I have noticed a number of items that are completely manufactured.

Specifically, I never told you I would have “fun” arguing your threatened motion and the conversation I purportedly had with my client while getting on the elevator was also completely manufactured. You basically just made that up. (Exhibit 10).

Defense counsel did not think Mr. Harvath would simply deny his statements made in the lobby of McMahon Berger inasmuch as they were made in a very loud voice and in front of other individuals present in the office. Given Mr. Harvath's lack of honesty with respect to the current matter, Defendant files herewith the Sworn Affidavit of Bonnie Dreppard attesting to her firsthand knowledge of the comments of Mr. Harvath and the exchange between Mr. Harvath and Ms. Hurlburt on the morning of December 12, 2018, in the lobby of McMahon Berger, PC (Exhibit 11).

More specifically, the attached Exhibit 11, the Sworn Affidavit of Bonnie Dreppard, is now submitted in support of paragraphs 22 and 38 of Defendant's Motion for Sanctions.

In addition, it is apparent that Mr. Harvath had absolutely no intention of going forward with Plaintiff's deposition as scheduled as evidenced by the fact that when he asked to speak with Mr. Younger, Ms. Dreppard indicated she would check to see if they were ready and, if not, she would provide Mr. Harvath and his client a conference room. Mr. Harvath replied "We won't be here long." Clearly, Mr. Harvath had no intention of proceeding with the deposition and, given the question of his client, this decision was solely that of Mr. Harvath!

WHEREFORE, for the reasons more fully stated in Defendant's Motion for Sanctions together with the information set forth herein, Defendant prays this Court Grant Defendant's Motion for Sanctions in its entirety together with any such other and further orders this Court deems just and proper.

Respectfully submitted,

McMAHON BERGER, P.C.

/s/ Robert D. Younger
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2018, a true and correct copy of the foregoing was served via the Court's electronic filing system addressed as follows:

Daniel E. Harvath
75 W. Lockwood
Webster Groves, MO 63119
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/s/ Robert D. Younger